

REMARKS

Applicants respectfully request the Examiner to reconsider the present application in view of the following remarks.

Claim 23 is currently pending.

Issues under 35 U.S.C. § 102(b) and § 103(a)

Claim 23 stands rejected under 35 U.S.C. § 102(b) for anticipation, or in the alternative under § 103(a) as being unpatentable, in view of WO 2000/50395 (hereinafter “**WO ‘395**”). Applicants respectfully traverse.

The present invention is directed to a crystalline form of N-(3-cyano-4-methyl-1*H*-indol-7-yl)-3-cyanobenzenesulfonamide having the X-ray diffraction pattern as depicted in Figure 3.

The instantly claimed crystals are different from the crystals in WO ‘395. Applicants note **Example 1B** described in paragraph [0070] of the present specification, which states:

Crystals of the title compound were synthesized using the same reaction conditions and recrystallization conditions as for the N-(3-cyano-4-methyl-1*H*-indol-7-yl)-3-cyanobenzenesulfonamide described in **WO00/50359**¹.

Applicants note the X-ray diffraction pattern of Example 1B as shown in Figure 2. This is clearly different from Figure 3 (or the present invention). Thus, the X-ray diffraction data in Figure 3 of pending claim 23 is different from the WO ‘395 reference.

¹ WO 00/50359 is incorrectly listed, and is instead the same WO ‘395 reference that is cited for this rejection.

Also, Figure 3 corresponds to Example 1C (paragraph [0008]) in the present specification, wherein Example 1C incorporates ethanol and isopropyl alcohol (paragraphs [0080]-[0082]). In contrast, as stated in the Office Action, the Examiner states that WO '395 uses the solvents of ethanol and n-hexane.

Based on the above, withdrawal of this rejection is respectfully requested. Otherwise, should the Examiner maintain this rejection, Applicants request scientific evidence to support such a rejection.

Issues of Obviousness-Type Double Patenting

Claim 23 stands rejected for obviousness-type double patenting in view of claims 1-3, 8-11 and 13-20 of U.S. Patent No. 6,469,043. U.S. Patent No. 6,469,043 B1 is the English equivalent of WO '395. Thus, reconsideration is respectfully requested in light of the comments above. The '043 patent is directed to a different polymorph/compound versus the present invention. Withdrawal of this rejection is respectfully requested.

Conclusion

Applicants have addressed all outstanding issues and respectfully request a Notice of Allowability.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eugene T. Perez, Reg. No. 48,501, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.


Application No. 10/571,279
Art Unit 1626
Reply to Office Action of December 8, 2009

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 

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